IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A No.917-DB of 2004

DATE OF DECISION: July 29, 2009

LAKHWINDER SINGH @ LAKHA AND OTHERS ...APPELLANTS

VERSUS

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

PRESENT: MR. P.S. BRAR, ADVOCATE FOR THE APPELLANTS.
MRS. MANJARI NEHRU KAUL, ADDL.A.G., PUNJAB.

ASHUTOSH MOHUNTA, J.

The appellants Lakhwinder Singh @ Lakha, Chamkaur Singh @ Cheena and Balwinder Singh @ Binder Singh have challenged the judgement and the order of sentence dated 21.9.2004, vide which they have been convicted under Section 302 and 324 read with Section 34 IPC and have been sentenced as under:-

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Offence U/S	*Sentence of Imprisonment*	*Fine*	*In default of payment of fine*
	LAKHWINDER SINGH @ LAKHA		
302 IPC	*Imprisonment for life.*	*Rs.1000/-*	*RI 01 month*
324/34 IPC	*RI 01 year*	*(no fine)*	*-*
	CHAMKAUR SINGH @ CHEENA @ DINA		
302/34 IPC	*Imprisonment for life.*	*Rs.1000/-*	*RI 01 month*
324 IPC	*RI 01 year*	*(no fine)*	*-*

BALWINDER SINGH @ BINDER SINGH

302/34 IPC	*Imprisonment for life.*	*Rs.1000/-*	*RI 01 month*
324/34 IPC	*RI 01 year*	*(no fine)*	*-*

All the three appellants have also been directed to pay compensation of Rs.30,000/- each to Paramjit Kaur, widow of the deceased Gurmail Singh @ Gela and in default of payment of compensation the accused-appellants shall undergo R.I. for 1 year. All the sentences were ordered to run concurrently.

The case of the prosecution is unfolded from the statement of Nachhatar Singh dated 3.8.2002, recorded by Tara Singh, S.I. It was stated by the complainant that he is resident of Sanjay Nagar, Faridkot and is a labourer. He has two other brothers. The eldest is Mandar Singh who resides in village Mandwala and Gurmail Singh is younger to him. He and Gurmail Singh reside in separate rooms in their house in Sanjay Nagar. About 3-4 days prior to the day of occurrence Cheena S/o Binder Singh also resident of Sanjay Nagar alongwith one other person climbed at the roof of their house at night. On seeing them, his younger brother Gurmail Singh raised an alarm, upon which both the persons ran away and on the next day his brother Gurmail Singh had gone to the house of Cheena S/o Binder Singh and lodged a protest. Lakhwinder Singh and his family were not happy with the protest made by Gurmail Singh. The complainant also gave information to the Panchayat of their basti, but no one from the accused side came before the Panchayat. Today, i.e. on 3.8.2002, at about 9.00 p.m. the complainant and his brother Gurmail Singh were standing in front of their house in the street. At that time, Lakhwinder Singh S/o Binder Singh, his

brother Cheena and his father Binder Singh and Gurpreet S/o Gian came from the side of their house and on coming near them Binder Singh raised lalkara that they be taught a lesson for lodging the protest. Thereafter, Lakhwinder Singh took out a dagger from his fold and struck it on the chest of Gurmail Singh which hit him on the left side of the heart. Gurmail Singh fell down on the ground. The complainant stepped forward upon which Cheena gave him a blow with a knife on the inner side of his right thigh and Gurpreet Singh gave a fist blow on his upper lip. In order to save the complainant side, one of their neighbours, namely, Jassa Singh S/o Hari Singh stepped forward and he was also given a dagger blow which hit him on the left side of the flank. The complainant raised alarm '*Maar Diya-Maar Diya*' and then all the accused ran away from the spot alongwith their weapons. On the basis of aforementioned statement, formal FIR was recorded on 3.8.2002, at 11.00 p.m. and the same reached the Illaqa Magistrate at 12.10 a.m. on 4.8.2002.

All the injured were taken to G.G.S. Medical Hospital, Faridkot by Sukhdev Singh, one of their relatives, where Gurmail Singh @ Gela was declared brought dead.

Inquest was conducted by S.I. Tara Singh I.O. alongwith other Police officials, who went to the place of occurrence and recorded the statements of witnesses and prepared a rough site plan. He made a request to get conducted the post mortem examination of the dead body.

Dr. S.S. Sandhu PW1 conducted the post mortem examination of Gurmail Singh on 4.8.2000, and found the following injury on the dead body:

"*Incised stab wound eliptical in shape present on the left side*

of chest 4 cms below the left nipple measuring 2.75 x 1 cms. Clotted blood was present. Wound was vertically placed. On dissection of the chest, wound going inwards through 5th inter costal space, lacerating the muscles, pleural and myocardial cavities, there was cut present on the lower side (anterior) side of left ventrical measuring 2 x 0.75 cms through and through in the anterior wall of the left vertical. Myocardial cavity contain about 500 CC of fluid and clotted blood. Left pleural cavity contained about 200 CC of fluid and clotted blood."

According to Dr. Sandhu, the cause of death, in his opinion, was due to shock and haemorrhage and also injury to the heart which was sufficient to cause death in the ordinary course of nature. On 6.8.2002, all the accused were produced before the Police by Jassa Singh, Member, Block Samiti, village Pakka and they were taken into custody. The accused were interrogated and during interrogation the accused Lakhwinder Singh suffered a disclosure statement to the effect that he had kept concealed one dagger used in the commission of the crime near the gate of Grain Market admist kikkar trees and grass about which only he knew and could get the same recovered. Similarly, Cheena @ Chamkaur Singh also suffered a disclosure statement regarding concealment of one dagger which he had used in commission of the crime. Both the accused got the weapons recovered from the disclosed places, which were sent to Forensic Science Laboratory. The accused were committed to the Court of Sessions by the Chief Judicial Magistrate vide Commitment order dated 16.9.2002, and were charged under Sections 302, 324 and 34 IPC. The accused pleaded not guilty to the charges and claimed trial.

In order to prove its case, the prosecution examined as many as 14 witnesses. PW1 Dr. S.S. Sandhu, Sr. Lecturer, Forensic Medicine, GGS, Medical College, Faridkot has stated that he conducted the post mortem on the dead body of Gurmail Singh and found one injury on the chest of his person. It was deposed by PW1 that injury caused to the deceased was sufficient to cause his death in the ordinary course of nature. The prosecution also examined the complainant, PW3 Nachhatar Singh, brother of the deceased who was the eye witness to the occurrence and also PW4 Paramjit Kaur wife of the deceased who had also witnessed the occurrence. Nachhatar Singh in his statement has deposed that Binder Singh had given a lalkara at which the accused Lakhwinder Singh took out a dagger from his fold and gave a blow hitting on the left side of his chest of his brother Gurmail Singh who fell down. He rushed to save his brother upon which Cheena took out a knife and hit the same on his right thigh. His sister-in-law Paramjit Kaur who was also present raised hue and cry at which her neighbour Jassa Singh S/o Hari Singh came to rescue them and he was also given a blow with a dagger by the accused Lakhwinder Singh on the left side of abdomen. On raising of alarm by Paramjit Kaur, all the accused ran away.

Paramjit Kaur PW4 has also deposed on the similar lines. She has also stated that it was Lakhwinder Singh who gave one blow on the chest of her husband Gurmail Singh. Other witnesses who conducted the investigation and other formal witnesses were also examined by the prosecution.

The accused Lakhwinder Singh in his statement under Section 313 Cr.P.C. pleaded innocence and also stated that that he had no intention

or motive to kill the deceased. It was averred that Gurmail Singh had a tenant in his house who was his friend and he used to visit him. But Gurmail Singh did not like his visits and suspected that he used to come to meet his wife. It was further stated that on the date of occurrence, Gurmail Singh objected to the visits of Lakhwinder Singh and inflicted a soti blow on his head and in order to save himself he picked a knife from a nearby shop and inflicted one blow on the deceased and ran away. The other accused also pleaded innocence.

The trial Court after hearing the arguments and going through the entire record held that all the three accused shared a common intention to murder Gurmail Singh. The trial Court held that statements of PW3 Nachhatar Singh and PW4 Paramjit Kaur inspired confidence and both the witnesses have categorically given a graphic account of the manner in which the crime was committed. Both the eye witnesses were natural witnesses and their testimony could not be shaken by the defence. It was also held that the ocular evidence stands fully corroborated by the medical evidence and accordingly convicted the accused under Section 302 and 324 read with Section 34 IPC.

Mr. Brar, counsel for the appellants has contended that it was a sudden fight in which only one blow is alleged to have been given by accused Lakhwinder Singh which resulted in the unfortunate death of the deceased Gurmail Singh. It is submitted that there was no intention to kill the deceased Gurmail Singh and that the case, at the most, falls under Section 304 Part II IPC.

Counsel for the appellants has placed reliance on *Charan Singh* vs. *State of Punjab*, 1997(2) RCR (Criminal) 19, wherein the accused had

inflicted one injury in the abdomen with a small kirpan and made no attempt to cause any other blows. There was also no pre-meditation. The sentence under Section 302 IPC was set aside and the accused was convicted under Section 304 Part II IPC. Reliance has also been placed on *Ramesh Kumar @ Tony* Vs. *State of Haryana*, 2009(2) RCR (Criminal) 857, wherein the accused gave one kassi blow on the head of the deceased and the conviction under Section 302 IPC was set aside and he was convicted under Section 304 Part I IPC.

It was next contended that the other accused, namely, Chamkaur Singh @ Cheena and Binder Singh did not share common intention of causing murder of Gurmail Singh and both these persons also did not have the knowledge that Lakhwinder Singh was carrying a dagger and he would use the same to kill the deceased. Learned counsel has further submitted that the accused Chamkaur Singh @ Cheena did not cause any injury to the deceased whereas, Balwinder Singh @ Binder Singh is alleged to have given a lalkara only and has not caused any injury either to the deceased or to the injured witnesses and hence Chamkaur Singh @ Cheena can only be convicted for his individual crime, i.e. of giving a simple injury on the thigh of the complainant Nachhatar Singh. Whereas Balwinder Singh @ Binder Singh deserves to be acquitted as he has not given any injury either to the deceased or to any other witnesses. The fourth accused Gurpreet is a juvenile and is being tried by the Juvenile Court separately.

Counsel for the appellants has further submitted that as per FIR Jassa Singh S/o Hari Singh was also given an injury by Lakhwinder Singh, but he has not been examined by the prosecution and therefore, the case of the prosecution is weakened by the absence of examination of any independent witness.

Counsel for the State has controverted the arguments raised on behalf of the accused-appellants. It has been argued that all the three accused shared a common intention to commit the murder of Gurmail Singh as Gurmail Singh had gone to the house of the accused and had raised a protest as to why Chamkaur Singh @ Cheena alongwith another person had climbed the roof of their house about 3-4 days prior to the date of occurrence. This protest had enraged the accused party and they wanted to teach Gurmail Singh a lesson. It has further been argued by the counsel for the State that injury was caused to the deceased on the vital part of his body, i.e in the chest and hence the accused have rightly been convicted for committing the murder of Gurmail Singh. Learned State counsel has further submitted that the ocular version is fully supported by the medical evidence.

We have heard both the counsel at length and have perused the entire record.

A perusal of the facts in the present case shows that the accused Lakhwinder Singh gave one blow on the chest of deceased Gurmail Singh. No other injury was given either by him or by any other accused on the person of the deceased. If the intention of the accused was to commit the murder of the deceased Gurmail Singh, then he would have definitely been given blows by the other accused also. The ratio in the case of *Charan Singh's case* and *Ramesh Kumar's case* (supra) are fully applicable to the facts of the present case. This Court also cannot loose sight of the fact that Lakhwinder Singh did not go to the roof-top of the house of deceased 3-4 days prior to the occurrence. The deceased had not rebuked Lakhwinder Singh and hence the accused Lakhwinder Singh did not have any motive to cause the death of deceased. Thus, in view of the fact that the accused

Lakhwinder Singh caused only one knife blow to the deceased, therefore, we are of the considered opinion that the instant case falls under Exception 4 of Section 300 IPC. Accordingly, we set aside the conviction of this appellant under Section 302 IPC and convict him under Section 304 Part II IPC.

The next question that arises in the present case is whether all the accused shared common intention of causing murder of Gurmail Singh?

A perusal of the facts in the present case shows that there is nothing on record to show that Chamkaur Singh and Balwinder Singh @ Binder Singh knew that Lakhwinder Singh is carrying a dagger in the pocket of his trouser and that he would use the same in committing the murder Gurmail Singh. No injury was caused to the deceased by Chamkaur Singh, whereas the possibility of falsely roping in Balwinder Singh @ Binder Singh cannot be ruled out. Chamkaur Singh is alleged to have given a knife blow on the thigh of the complainant Nachattar Singh. The injury was declared to be simple in nature by the Doctor.

In view of the above, we are of the considered opinion that the accused Chamkaur Singh @ Cheena and Balwinder Singh @ Binder singh did not share a common intention to commit murder of Gurmail Singh. Thus, the accused Chamkaur Singh is convicted for his individual offence, i.e. under Section 324 IPC.

As far as the accused Balwinder Singh is concerned, a perusal of the facts in this case shows that the deceased Gurmail Singh had lodged a protest against Chamkaur Singh for coming on the roof of his house alongwith another person. No protest was raised against the accused Lakhwinder Singh. Thus, there was no occasion for Balwinder Singh to

give lalkara and exhort Lakhwinder Singh to commit murder of Gurmail Singh. Hence, the possibility of falsely implicating Balwinder Singh cannot be ruled out. Resultantly, the accused Balwinder Singh is given the benefit of doubt and is acquitted of all the charges.

Resultantly, we partly allow the appeal and set aside the conviction of the appellant Lakhwinder Singh under Section 302 IPC and convict him under Section 304 Part II IPC and sentence him to undero R.I. for a period of 7 years. The appellant Chamkaur Singh @ Cheena is convicted under Section 324 IPC and sentence of R.I. for 1 year is maintained.

Fine of Rs.1000/- imposed on both these appellants is maintained and in default of payment of fine, they shall undergo R.I. for 1 month. Both these appellants shall, however, pay compensation of Rs.30,000/- each to Paramjit Kaur, widow of deceased Gurmail Singh, if not already paid and in default of payment of compensation the accused shall further undergo R.I. for 1 year. The accused-appellant Balwinder Singh @ Binder Singh has been acquitted of all the charges, however, in case the compensation has been paid to the widow of the deceased by this appellant, he shall not be entitled to claim refund of the same.

(ASHUTOSH MOHUNTA)
JUDGE

July 29, 2009
Gulati

(MOHINDER PAL)
JUDGE